

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the) Application No. C-3324
Petition of N.E. Colorado)
Cellular, Inc., d/b/a Viaero)
Wireless, Fort Morgan,) GRANTED
Colorado, for designation as)
an Eligible Telecommunica-)
tions Carrier under 47) Entered: October 18, 2005
U.S.C. § 214(e)(2).

APPEARANCES:

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BY THE COMMISSION:

Background

By Application filed December 23, 2004, N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless, Fort Morgan, Colorado ("Applicant" or "Viaero"), seeks designation as an eligible telecommunications carrier (hereinafter, "ETC") pursuant to Section 214(e)(2) of the Telecommunications Act of 1934, as amended ("Act"), 47 U.S.C. § 214(e)(2), and Section 54.201 of the Federal Communications Commission's ("FCC") rules, 47 C.F.R. § 54.201. The Application was amended by Viaero on May 2, 2005. Amended Notice of the Application was published in the Daily Record, Omaha, Nebraska, on May 16, 2005.

On January 28, 2005, a Protest was filed on behalf of the Rural Independent Companies, also known as the Rural Telephone Companies ("RTC"): Arlington Telephone Company; Blair Telephone Company; Cambridge Telephone Co.; Clarks Telecommunications Co.; Consolidated Telco, Inc.; Consolidated Telcom, Inc.; Consolidated Telephone Company; Dalton Telephone Company, Inc.; Eastern Nebraska Telephone Company; Elsie Telecommunications, Inc.; Great Plains Communications, Inc.; Hamilton Telephone Company; Hartington Telecommunications Co., Inc.; Hemingford Cooperative Telephone Co.; Hershey Cooperative Telephone Company; K & M Telephone Company, Inc.; Nebraska Central Telephone Company; Northeast Nebraska Telephone Company; Rock County Telephone Company; Stanton Telephone Co., Inc. and Three River Telco.

On the same date, a Protest was filed on behalf of the Nebraska Independent Companies for Embedded-Cost Support, also known as the Rural Telecommunications Coalition of Nebraska ("RTCN"): Arapahoe Telephone Company, d/b/a ATC Communications; Benkelman Telephone Company, Inc.; Cozad Telephone Company; Curtis Telephone Company; Diller Telephone Company; The Glenwood Telephone Membership Corporation; Hartman Telephone Exchanges, Inc.; Keystone-Arthur Telephone Company; Mainstay Communications; Plainview Telephone Company; Wauneta Telephone Company and Westel Systems, f/k/a Hooper Telephone Company (RTC and RTCN hereinafter referred to as "Intervenors").

Hearings on the Application were held on July 18 and 19, 2005, in the Commission Hearing Room, Lincoln,

Nebraska, and on July 20, 2005, in the McCook, Nebraska, City Council Chambers, with appearances as shown above. In support of its Application, Viaero presented three witnesses at the hearings in Lincoln and seven witnesses in McCook. RTC presented three witnesses, and RTCN one witness, in Lincoln. Additionally, six members of the public made statements at the hearing in McCook.

Summary of Testimony and Evidence

Viaero is a commercial mobile radio service ("CMRS") provider organized under the laws of the State of Colorado and licensed by the Federal Communications Commission ("FCC"). In Colorado, Viaero is licensed in the northeastern portion of the state, an entirely rural area. In Nebraska, Viaero is licensed throughout the western two-thirds of the state, which comprises some of the most rural portions of the state. Viaero seeks an ETC designation in the non-rural and rural areas identified in Exhibits B and C to the Application as amended on May 2, 2005, and seeks designation in the rural ILEC service areas which it also requests to be redefined as identified in Exhibit D to the Application as amended in its May 2, 2005 Amended Application.

Mr. Larry Aisenbrey, Director of Government Relations for Viaero, in his prepared testimony, stated that Viaero has the capability and commitment to offer and advertise its services throughout its proposed ETC service area in Nebraska. He noted the company's record; specifically, that Viaero has been operating a rural cellular system in northeastern Colorado for over 15 years, growing the business from scratch to its current level of over 30,000 subscribers. Viaero offers virtual end-to-end coverage in its Colorado ETC service area, with a "virtually non-blocking system" so that calls may be completed during peak hours and emergency situations. When congestion of 10 seconds or more per week at a cell site is observed, Viaero adds capacity. As a result, Viaero claims a virtually non-blocking network with a 99.8% call completion rate.

Mr. Aisenbrey testified that Viaero offers the nine supported services throughout its Colorado ETC service area and has worked closely with the Colorado Public Utilities Commission to ensure that Colorado consumers receive the benefits of universal service. With support in Colorado, Viaero has constructed sites in communities that would not

have received new cell sites without funding.

Viaero maintains a hotline for customers to reach the company any time they need service. According to Mr. Aisenbrey, the company's crews respond immediately to outages on a "24/7" basis. Whenever a service-affecting alarm is activated at a cell site, the technician on call is paged immediately and automatically. Teams are then dispersed to correct the problem.

Viaero has implemented E-911 Phase II in Colorado where requested, and is functioning within FCC accuracy guidelines. Mr. Aisenbrey stated that Viaero is prepared to roll out Phase II in every area where a PSAP formally requests such service in Nebraska.

In 1998 and again in 2000, Viaero expanded its network by applying for cellular licenses in both Colorado and Nebraska under the FCC's 'Phase 2' licensing process, and has constructed network facilities in these rural areas after being licensed by the FCC. In 2002-2003, Viaero acquired several wireless licenses in the personal communications services ("PCS") spectrum from a group of Nebraska rural ILECs, and acquired several other licenses from AT&T Wireless/Cingular. As a result of these acquisitions, Viaero is now licensed to serve all of western and central rural Nebraska, comprising approximately 650,000 residents. According to Mr. Aisenbrey, since acquiring those licenses in Nebraska, Viaero has invested \$20 million in 2003 and \$20 million in 2004 to construct 70 new cell sites in western Nebraska and tie the system together with T-1, microwave, switching, and trunking facilities. The company has opened eight stores in Nebraska, employs 23 Nebraskans and expects to hire 47 more by year end 2005.

The Application and pre-filed testimony state generally that Viaero is a common carrier and provides the supported services including voice-grade access to the public switched network, local usage, dual tone, a functional equivalent to dual-tone, multi-frequency signaling, single-party service, access to emergency services, access to operator services, access to interexchange service, access to directory service, and will, upon designation, provide toll limitation for low-income consumers. Viaero's application also states that Viaero will offer and advertise the availability of supported services throughout its proposed ETC service

area. Specifically, the Application avers that the public interest test is or will be met because: 1) improved coverage and service quality will lead to significant health, safety and economic development benefits, 2) granting of the Application will impose a negligible burden on the Federal Universal Service Fund, and 3) designation will promote competition and thereby facilitate the provision of advanced communication services to residents of rural Nebraska.

Mr. Bob Dillehay also testified on behalf of the applicant. Mr. Dillehay testified to the nature of Viaero's network architecture.

Mr. Don Wood testified that Applicant's designation would serve the public interest. Mr. Wood was a paid consultant who testifies routinely on issues of telecommunications, economic policy and market development issues. Mr. Wood testified that this applicant's case is unique and warrants special consideration. First, Viaero serves rural and often remote areas. Viaero is not a national carrier. Viaero considers how the increased coverage will benefit its entire customer base. He further testified that Viaero is more likely to build facilities into the most remote areas of the state and to create truly ubiquitous coverage for its customers. Mr. Wood's testimony explained the reasons why redefinition is necessary and the standards the Commission should consider in Viaero's redefinition request.

Mr. Kevin Kelly testified on behalf of the Rural Telecommunications Coalition of Nebraska. Mr. Kelly testified that Viaero had not complied with the Interim Guidelines the Commission adopted in June. Mr. Kelly stated Viaero had not filed a compliant five-year plan for use of its federal support. Mr. Kelly further stated that a grant of this application has the potential to cause harm to the rural companies.

Mr. Lynn Merrill testified on behalf of the Rural Independent Companies. Mr. Merrill is President and Chief Executive of Monte R. Lee and Company which is a consulting and engineering service company. Mr. Merrill recommended the Commission consider this application using the policy of the Rural Utility Service regarding the duplication of service and provisioning standards. Mr. Merrill believed Viaero provided insufficient detail in its plans to make a

determination granting Viaero's request for ETC designation.

Ms. Sue Vanicek also testified on behalf of the Rural Independent Companies. She is employed with TELECOM consulting resources. Ms. Vanicek testified that it was not in the public interest to designate Viaero as an ETC in Nebraska. She urged the Commission to adopt a recommendation sponsored by Billy Jack Gregg, Director of the Consumer Advocate Division of West Virginia. Mr. Gregg recommends that study areas that receive more than \$7.46 per line per month in federal high cost universal service support should be presumed to be so costly to serve that it doesn't make sense to have multiple ETCs within those particular study areas.

Mr. Dan Davis, a consultant employed by TELECOM Consulting Services, also testified on behalf of the Rural Independent Companies. Mr. Davis testified that Viaero had not complied with the Interim Guidelines established in C-3415.

At the public hearing in McCook, the Commission also heard testimony generally supporting Viaero's application from the following witnesses called by Viaero: Dennis Bauer, Leslie Carlholm, Deann Doetker, Ed Bauer, Robert Esch, Mike Ketter and Donald Middleton. Terry Vilka, Jean Tobiasson, Stanley Farr, Jim Tierney, Rod Keiser and Richard Minnick also made statements to the Commission concerning wireless safety and coverage issues. In addition, the Commission received letters in support of Viaero's application from individuals who could not be present to testify at the hearings in Lincoln or McCook.

O P I N I O N A N D F I N D I N G S

Supported Services

In 1997, the FCC released its *Universal Service Report and Order* in CC Docket 96-45, FCC 97-157 (*Universal Service Order*), which implemented several sections of the Act. The FCC's *Universal Service Order* provides that only eligible telecommunications carriers designated by a state commission shall receive federal universal service support. Section 214(e) of the Act delegates to the states the ability to designate a common carrier as an ETC for a

service area designated by the state commission. A service area is the geographic area established for the purpose of determining the universal service obligation and support eligibility of the carrier. The FCC also provided that "competitive neutrality" should be an added universal service principle. Section 214(e)(1) provides that an ETC Applicant shall:

[T]hroughout the service area for which such designation is received--

(A) offer the services that are supported by Federal universal service support mechanisms under section 254 . . .; and

(B) advertise the availability of such services and the charges therefore using media of general distribution.

The FCC's supported services are found in 47 C.F.R. §54.101(a) and are as follows:

- a. voice grade access to the public switched network;
- b. local usage;
- c. dual tone multi-frequency signaling or its functional equivalent;
- d. single-party service or its functional equivalent;
- e. access to emergency services;
- f. access to operator services;
- g. access to interexchange services;
- h. access to directory assistance; and
- i. toll limitation for qualifying low-income consumers.

Upon review of the Application and testimony presented, the Commission finds that Applicant has the ability and has committed to provide the supported services listed in a-i, above. We also find Applicant has provided sufficient commitments to advertise the availability of such services and charges using media of general distribution.

Public Interest

Federal law also requires that the Commission find that "the designation is in the public interest." 47 USC § 214(e)(2). To determine whether designating Viaero as an ETC would serve the public interest, we engage in a fact specific inquiry about Viaero's proposed service and commitments. Recently, the FCC has offered more specific guidance on the public interest issue through its decisions in *Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, FCC 03-338, 19 FCC Rcd 1563 (released Jan 22, 2004) (*Virginia Cellular*), *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, FCC 04-37, 19 FCC Rcd 6422 (released April 12, 2004) (*Highland Cellular*) and in its March 17, 2005 Report and Order. Although these decisions are not binding on our inquiry, the FCC's decisions outline some factors we also find to be relevant to this proceeding, such as this applicant's commitment to provide high quality service throughout its designated area, the characterization of its proposed designation area, the unique advantages or disadvantages the service would have on consumers, and an analysis of creamskimming concerns.

We first examine Viaero's commitments to provide quality telephone service throughout the designated area. In its testimony, Viaero commits that it will build additional cell sites and make other network improvements in rural areas providing a mobile telecommunications alternative. The Intervenor's caution that what is characterized as competition by Viaero may actually be duplication, and the benefits attributed to competition will not necessarily be present if this Application is granted. We are not convinced that rural ILEC investments in infrastructure will diminish if Viaero's application is granted. The federal rules provide that an ILEC's network continues to be fully supported even when a line is lost to a facilities-based competitive ETC. 47 C.F.R. Section 54.307. Additionally, we find Applicant has satisfied the Commission with its commitment to meet its obligation to provision service throughout its designated ETC service area. Viaero has supplied plans to expand its service by building new cell sites in Nebraska, and will report to this Commission how much federal USF support was received in the last year and how it was spent, and how much federal USF support is projected to be received in the next year and how it will be spent.

We next examine the Applicant's commitments regarding quality of telephone service. We acknowledge that if service quality is inadequate, customers will drop the service, and Viaero will lose support for those customers, which gives Viaero an incentive to provide quality service. We also believe that the annual reporting requirements contained in this Commission's Guideline Order (as hereinafter defined) are necessary and important. Viaero has committed to work in conjunction with the Commission should any service quality issues arise.

The Commission must also consider whether an Applicant demonstrates the commitment and ability to provide service to customers should an incumbent local exchange carrier seek to relinquish its ETC designation. Viaero states that it is capable of serving as the carrier of last resort in the area in which it seeks ETC designation and has made the commitment to fulfill these obligations should it become necessary. In his testimony, Mr. Aisenbrey described Viaero's policy for responding to every customer request for service. We add such procedures to the weight of evidence that Viaero's designation as an ETC is in the public interest. We conclude that Viaero has made adequate commitments and demonstrated its ability to provide service to customers in this regard.

The Applicant acknowledges that designation of additional ETCs creates a burden on the federal Universal Service Fund. Viaero has represented that most recent projections of The Universal Service Administrative Company (USAC) indicate Viaero will receive approximately \$885,000 in high-cost support in its first year of eligibility, representing approximately 0.02% of the total federal high-cost support project for that time period. We find that Viaero's designation will not cause a significant burden on the federal high-cost fund.

We next consider whether there are unique advantages and disadvantages related to Viaero's service offering and designating Viaero as an ETC. Unquestionably, Viaero's wireless offering will offer consumers mobility. On that benefit, the FCC has noted:

[T]he mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of

employment, stores, schools, and other critical community locations. In addition, the availability of a wireless universal service offering provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.

Highland Cellular at ¶ 23. However, we do not believe the benefit of mobility in and of itself is a sufficient reason to designate a carrier as an ETC. The Commission considers Viaero's service offerings, pricing plans, proposed coverage area and other network qualities in its assessment of this application. The Commission concludes that Viaero's commitment as demonstrated by its testimony and evidence to add cell sites and expand capacity and quality of service at existing cell sites would provide real benefits to consumers. See Exh. 103, Aisenbrey Direct at Exh. 1. In reviewing the testimony of Mr. Aisenbrey and the attached Exhibits, the Commission is convinced that Viaero is committed to allocating its federal universal service support to improving wireless coverage and quality of service to benefit Nebraska consumers. In addition, the nature of Viaero's local calling area gives rural consumers the advantages of calling outside their wireline local calling area without toll charges. At least one McCook witness testified that there would be significant toll savings if she had access to a quality wireless network. Numerous witnesses in McCook testified to the substantial health and safety benefits that could be achieved if they had access to quality wireless networks. Others testified as to how difficult it is to bring economic development to rural Nebraska because quality wireless networks are not currently present. Further, we considered Viaero's pricing plans to be comparable to local plans of other providers. Viaero committed to offering a plan rated at \$14.95 once ETC designation was granted. See Exh. 103 at 11; Tr. at 57-58. Taking this \$14.95 rated plan into account, the Commission believes Viaero's service plans are comparable to other basic service plans offered by the wireline carriers in Viaero's area. Finally, as presented by Mr. Wood in his testimony, Viaero's business plan is uniquely designed to build facilities into the most remote areas of the state and to ultimately create truly ubiquitous wireless coverage throughout its designated service area.

Creamskimming Concerns

We next address the issue of creamskimming. The FCC has addressed creamskimming in its ETC designation orders. Creamskimming refers to the practice of targeting the customers that are the least expensive to serve. See *In the Matter of Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, FCC 01-283, 16 FCC Rcd 18133, 18139 ¶ 15 (released Oct 5, 2001) (*Western Wireless Order*). The FCC has found that comparing population density inside the area proposed to be served to the population density outside the area proposed to be served is a useful proxy in making creamskimming determinations. See *Federal-State Joint Board on Universal Service, Report and Order*, CC Docket No. 96-45, FCC 05-46 at ¶ 20 (rel. March 17, 2005) ("*FCC ETC Order*"), 20 FCC Rcd at 6393. Although the FCC's ruling on this issue has been appealed to the courts, Viaero has provided the analysis for the Commission to consider.

Viaero has provided evidence that it is not proposing to selectively serve low-cost areas; rather, in each instance where Viaero is proposing to serve less than an entire ILEC study area, it is serving the highest-cost portions of the ILEC territories. See, Viaero's data derived from Exh. 102, E. In each case, Viaero is serving the least dense portion of the affected ILEC service area, and is serving areas below the average population density of the entire ILEC study area. Moreover, as discussed *infra*, all rural ILECs have had an opportunity to disaggregate high-cost support to move support from lower-cost areas out to higher-cost areas where it is needed, and they may amend their disaggregation plans going forward to address any residual concerns.

The Intervenor's argue that some areas are so rural that it is improper to designate multiple ETCs for that area. Two arguments are built into that assertion: (1) designation of multiple ETCs will impose an unreasonable burden on the Federal Universal Service Fund, and (2) designation of a CETC will harm the rural ILEC and, ultimately, customers. The first argument has already been addressed above. We turn to the second argument, noting there are many benefits that will come with competition in rural areas, such as "incentives to the incumbent to implement new operating efficiencies, lower prices, and

offer better service to its customers." *Wyoming Order, supra*, at 57, ¶ 22.

We disagree that the present designation necessarily will harm rural ILECs and customers. Viaero will provide wireless communications in these areas, a different service than traditional wireline local exchange service. We also note that Viaero will not receive any funds for serving a rural area unless it constructs infrastructure and actually serves customers who have a billing address in that rural area. Accordingly, we reject the Intervenor's arguments that CETCs should not be designated for rural Nebraska.

Ultimately, each of the factors discussed above were included in our cost-benefit analysis. As we have discussed, Viaero's application would bring competition, spur innovation, provide advantages through increased mobile wireless offerings, and offer the supported services to customers who request service in the designated area. We acknowledge the costs of designating Viaero as an ETC, but believe the benefits outweigh any harm of granting the Application. Overall, we conclude that designating Viaero as an ETC would bring unique advantages weighing in favor of granting the application. Therefore, we find that Viaero's Application for designation as an ETC in its designated area is in the public interest.

The Commission finds the Applicant has presented sufficient and credible evidence that it is willing and capable of meeting the requirements of Section 214(e)(2) and has every intention of carrying out its plan to provide the supported telecommunications services throughout the designated area.

Redefinition of ILEC Service Areas

The following rural ILECs have service areas that include territory that is beyond Viaero's proposed ETC service area in Nebraska: Arapahoe Telephone Company; Cambridge Telephone Company; Citizens Telecommunications Company d/b/a Frontier Communications of Nebraska; Great Plains Communications, Inc.; Eastern Nebraska Telephone Company and Northeast Nebraska Telephone Company. Therefore, Viaero requests the Commission to redefine these rural ILECs' service areas pursuant to Section 54.207(c) of the FCC's rules so that each of the affected rural ILECs' wire centers is defined as a separate service area. Service

area redefinition is necessary in order to facilitate competitive entry and advance universal service for consumers living in areas served by those ILECs. Once the Commission establishes redefined service areas for these rural ILECs, Viaero shall file a petition requesting the FCC to concur with the state's redefinition.

In the *Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87 (1996) ("*Recommended Decision*") that laid the foundation for the FCC's *First Report and Order*, the Joint Board recommended that state Commissions consider three issues when redefining a service area.

First, the Joint Board noted that breaking down ETC service areas below the study area level may create the potential for "creamskimming," which could occur if a competitor proposed to only serve the lowest-cost exchanges. In this case, Viaero is restricted to providing service in those areas where it is licensed by the FCC and is required to offer service throughout its designated service area. Moreover, as of May 2002, all rural ILECs, including those listed above, were required to select among three paths adopted in the *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244 (2001) (*Fourteenth Report and Order*), for the disaggregation and targeting of high-cost support below the study area level. When support is no longer averaged across an ILEC's study area, a competitor no longer has the incentive or ability to enter into ILEC service territories in an uneconomic manner. Several states which have examined requests to redefine rural ILEC service areas have concluded that where rural ILECs have disaggregated support, the possibility for creamskimming is reduced.¹ Additionally, under the FCC's

¹ See, e.g., *RCC Maine Order, supra*, at p. 11 (finding that the affected ILECs "have the option of disaggregating their USF support . . . thereby lessening the opportunity for a windfall for RCC should only customers in less rural areas subscribe to RCC's service."); *AT&T Washington Order, supra*, at p. 15 ("This Commission and the carriers in this state have taken significant action to prevent cream-skimming by a carrier that would obtain ETC designation but not serve the highest-cost portion of the service area. This Commission has required the disaggregation of federal support."); *GCC License Corp., Docket No. TC98-146 (S.D.*

rules, rural ILECs that have not disaggregated support may do so in order to prevent uneconomic competition in low-cost areas. See 47 C.F.R. §§ 54.315(b)(4), 54.315(c)(5), 54.315(d)(5).

Second, the Joint Board noted the special status of rural carriers under the Act. See *Recommended Decision*, 12 FCC Rcd at 180. In deciding whether to designate Viaero as an ETC, the Commission has weighed numerous factors and considered how the public interest is affected by an award of ETC status pursuant to 47 U.S.C. § 214(e)(2). Accordingly, the Commission's finding that Viaero's ETC designation is in the public interest has taken into consideration the special status of the rural carriers for purposes of determining whether Viaero's service area designation should be adopted for federal universal service funding purposes. Further, no action in this proceeding will affect or prejudice any future action the Commission or FCC may take with respect to each affected ILEC's status as a rural telephone company.

Finally, the Joint Board recommended that the FCC and state Commissions consider whether a rural ILEC would face an undue administrative burden as a result of service area redefinition. *Id.* In the instant case, Viaero is proposing to redefine rural ILEC service areas solely for ETC designation purposes. Service area redefinition for ETC purposes will in no way impact the way the aforementioned rural ILECs calculate their costs, but it is solely to determine the areas in which Viaero is to be designated as an ETC. Accordingly, redefinition of the service areas referenced herein, as proposed in Applicant's

PUC, Oct. 18, 2001) ("If a rural telephone company is concerned about the possibility of GCC attempting to serve only the lower cost lines contained in a high cost area, the rural telephone company should select a disaggregation option as soon as possible."); *Nextel Wisconsin Order*, Docket No. 8081-TI-101 (Wis. PSC, September 30, 2003), at p. 10 (finding that the ILECs' ability to disaggregate support renders concerns about creamskimming "largely moot."). See also *Northwest Dakota Cellular of North Dakota Limited Partnership d/b/a Verizon Wireless et al.*, Case No. PU-1226-03-597 et al. at pp. 10-12 (N.D. PSC, Feb. 25, 2004); *Easterbrooke Cellular Corp.*, *Recommended Decision*, Case No. 03-0935-T-PC at p. 55 (W.V. PSC, May 14, 2004, aff'd by Final Order on Aug. 27, 2004).

Petition, will not impose any additional burdens on the affected rural ILECs.

Viaero has demonstrated that its proposed redefinition of the designated rural ILEC service areas fully satisfies the Joint Board's recommendations and the FCC's analysis under the Act. Viaero is serving the higher-cost and less densely populated portions of the affected ILEC study areas and as a result we are not concerned about creamskimming. Accordingly, the proposed redefinition should be approved and submitted to the FCC for concurrence.

Docket C-3415

On June 28, 2005, in Docket C-3415, this Commission adopted certain Interim Guidelines which were designed to provide clarity for carriers seeking ETC designation in Nebraska. The Interim Guidelines were intended to mirror the guidelines established by the FCC in its March 17, 2005 *FCC ETC Order* concerning ETC applications (the "FCC Guidelines"). In our Order adopting the Interim Guidelines (the "Guideline Order"), the Commission incorporated a provision that a common carrier seeking to be designated an ETC in Nebraska must submit a five-year plan describing with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area.

The Commission acknowledges that Viaero provided in discovery certain five-year build-out projections, which constituted the full extent of its five-year improvement projections at that time. At the hearing on the Application, Viaero's witness testified that Viaero would be willing to file a five-year plan upon the request of the Commission. The Commission did not make Viaero file a five-year plan conforming to the Commission's Interim Guidelines prior to its determination of its ETC application. However, the Commission finds that an additional five-year plan conforming to the Interim Guidelines must be filed by Viaero with the Commission on or before March 15, 2006. The Commission believes this will give Viaero sufficient time to prepare a five-year plan for the Commission.

In summary, we find Viaero's application for ETC designation should be approved.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the application of N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless, should be and it is hereby granted and Viaero Wireless is designated as an eligible telecommunications carrier in the state of Nebraska for the purpose of receiving federal universal service support as requested in the Application as amended consistent with the findings and conclusions made herein.

IT IS FURTHER ORDERED that Viaero file a five-year plan as provided above on or before March 15, 2006.

MADE AND ENTERED at Lincoln, Nebraska, this 18th day of October, 2005.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the) Application No. C-3324
Petition of N.E. Colorado)
Cellular, Inc., d/b/a Viaero)
Wireless, Fort Morgan,) ORDER NUNC PRO TUNC
Colorado, for designation as)
an Eligible Telecommunica-)
tions Carrier under 47) Entered: November 8, 2005
U.S.C. § 214(e)(2).

BY THE COMMISSION:

O P I N I O N A N D F I N D I N G S

On October 18, 2005, the Commission entered an order granting the application of N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless, of Fort Morgan, Colorado seeking designation as an eligible telecommunications carrier under 47 U.S.C. § 214(e)(2). On page twelve of that order the Commission described the companies impacted by Viaero's application for redefinition of certain rural incumbent local exchange carrier (ILEC) service areas pursuant to Section 54.207(c) of the FCC's rules. The Commission inadvertently included Arapahoe Telephone Company and Cambridge Telephone Company. According to the Amended Petition filed by Viaero on May 2, 2005, Viaero has the ability to serve the entire Arapahoe Telephone Company (Arapahoe) service area and the entire Cambridge Telephone Company (Cambridge) service area. Accordingly, Arapahoe and Cambridge should not be included in the areas Viaero requested to be redefined. The Commission enters this order nunc pro tunc to correct this error and to remove the reference to Arapahoe and Cambridge from that section of the order.

The purpose of an order nunc pro tunc is to correct the record which has been made so that it will truly record the action taken which, through inadvertence or mistake, was not truly recorded. Interstate Printing Co. v. Dept. of Revenue, 236 Neb. 110, 459 N.W.2d 519 (1990). Clerical errors may be corrected by an order nunc pro tunc, but not judicial errors. Larson v. Bedke, 211 Neb. 247, 318 N.W.2d 253 (1982).

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the order be corrected to remove the reference to Arapahoe Telephone Company and Cambridge Telephone Company from the redefinition section of the October 18, 2005 Order.

MADE AND ENTERED at Lincoln, Nebraska, this 8th day of
November, 2005.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director